IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER ARBITRATION ACT NO. 8 OF 2003.

State of Goa,
represented by the
Executive Engineer,
P.W.D. Works Division II (R&B),
Patto, Panaji, Goa. .... Appellant.

Versus

Shri N.B. Dhargalkar,
Civil Contractor,
Muquem, Cuncolim,
Salcete,Goa. .... Respondent.

Mr. S.R. Rivonkar, Government Advocate with Mr. G. Nagvenkar, Advocate for the Appellant.

Mr. S.G. Dessai, Senior Advocate with Mr. S. Kalshawkar, Advocate for the Respondent.

CORAM: S. A. BOBDE, S.

DATE: 9th March, 2007.

ORAL JUDGMENT:

This is an appeal under Section 39 of the Arbitration Act, 1940 (hereinafter referred to as the Act) against the Order of the Civil Judge, Senior Division, Panaji refusing to set aside the Award under Section 30 of the Act.

2. The respondent Shri N.B. Dhargalkar was awarded a contract for asphalting the road by the appellant-State of Goa. Amongst various other claims, he claimed that he had done a full ground asphalting of additional area of 309.90 sq. metres of road. He therefore made that claim amongst other claims before the Arbitrator. The Arbitrator considered his claim and made an Award of Rs.1,86,867/- at the rate of 15% per annum to be paid by the State to the respondent in respect of six claims made by the respondent. Out of six claims which were

made, the Arbitrator allowed three claims in particular and awarded payment for the additional area which the respondent asphalted at the rate of Rs.45/- per sq.m. for 309.90 sq. metres.

3. The State objected to the Award under Section 30 of the Act and claimed that the Arbitrator had misconducted himself inter alia by awarding to the respondent an amount for doing the asphalting of additional area for which no contract was given. This objection was made along with other objections. The learned Civil Judge S.D., Panaji rejected the objections of the State. Hence this appeal.

4. The learned Civil Judge S.D. has found that the Arbitrator had taken down actual measurements at the time of a joint inspection and the Award is based on such measurements recorded in the measurement book. The learned Civil Judge S.D. Found that the Arbitrator had not travelled beyond the terms of the reference while making the award.

5. Mr. Rivonkar, the learned Government Advocate submitted that there is a legal misconduct by the Arbitrator in awarding to the respondent the claim for having done 309.90 sq. metres of full ground asphalting which is recorded in the measurement book . The learned counsel contended that there is no dispute that such additional work was done, but this work was not done at the instance of the State but the respondent did the work as charity for the temple which near the additional road for which asphalting was done by the respondent. This story appears to have been disbelieved by the Arbitrator who found no justification whatsoever on the part of the State to treat this additional work done by the respondent as cancelled. Apparently, the appellant did not produce any material before the

Court for drawing the inference that this work was done by the contractor on his own as charity towards the Temple.

6. Indeed it is difficult to imagine why the respondent would do additional work to the extent of 309.90 sq.m. on his own unless the officers of the appellant asked him to do such work. There is no dispute that under clause 12 of the contract, the Government is empowered to ask the contractor to do additional work and the contractor is bound to carry out such additional work at the same rates as the original work.

7. In the circumstances, it is not possible to accept the submission that the appellant that the Arbitrator was guilty of any legal misconduct in awarding an amount for the additional work done by the respondent at the instance of the appellant-State. No other point is urged on behalf of the appellant.

There is no merit in this appeal which is hereby dismissed.

S. A. BOBDE, J.

sl.